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JUL 28 2016



MEMORANDUM

DATE: July 14, 2016
TO: Mayor and Council
FROM: Kay Bigelow, City Attorney (*kb*)
SUBJECT: Recommendation to Appeal Tax Case

RECOMMENDATION: The City Attorney's Office recommends joining the other cities involved in the appeal of a portion of the Arizona Tax Court's ruling in *City of Phoenix, et.al. v. Orbitz Worldwide Inc. et. al.*

BACKGROUND: Chandler joined 12 other cities in Arizona in challenging the Municipal Tax Hearing Officer's Ruling that various taxpayers which operate websites and telephone call centers allowing taxpayers to use the Internet to book reservations with hotels in the cities in the lawsuit are taxable under various theories (that the taxpayers are operating as hotels or as Brokers for the hotels). The amount that Chandler has at issue including taxes, penalties, interest and license fees is \$271,005.62 through July of 2016. The Municipal Tax Hearing Officer found in favor of the taxpayers. The Cities hired outside counsel to challenge this finding. The period at issue was from June 2001 through April 2009. The Arizona Tax Court ruled for the Cities but that the Cities were only authorized to collect such taxes prospectively as of August 31, 2015. There is no legal basis for the Tax Court's ruling. It is the opinion of outside counsel, and the City Attorney's office concurs with this view, that the Court does not have the authority to rule that the Cities are entitled to the taxes as a matter of law but are only entitled to collect them prospectively. The Court has effectively created 3 time periods: the audited period which was actually before the Court (June 2001 through April 2009), the prospective period (prospectively from August 31, 2015, and the middle period. Outside counsel is operating under an agreement of a contingency fee of 27%.

RECOMMENDED ACTION: The City Attorney's Office recommends authority to join other cities in appealing the action of the Tax Court. The issue appealed will be the non-retroactivity of the Judge's favorable ruling on the substantive issue in this matter.

PROPOSED MOTION: The Mayor and Council of Chandler authorize an appeal of the Tax Court opinion in the matter of *City of Phoenix, et.al. v. Orbitz Worldwide Inc. et. al.*